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August 1, 2005

DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: March 2, 2005

Case Number: TSO-0188

This Decision concerns the eligibility of XXXXXXXX (hereinafter "the individual") to hold an access authorization.<sup>1</sup> The regulations governing the individual's eligibility are set forth at 10 C.F.R. Part 710, "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." This Decision will consider whether, based on the testimony and other evidence presented in this proceeding, the individual is eligible for access authorization. As discussed below, I find that access authorization should not be granted in this case.

I. BACKGROUND

A. Notification Letter

This administrative review proceeding began with the issuance of a Notification Letter by a Department of Energy (DOE) Office, informing the individual that information in the possession of the DOE created substantial doubt pertaining to her eligibility for an access authorization in connection with her work. In accordance with 10 C.F.R. § 710.21, the Notification Letter included a statement of the derogatory information causing the security concern.

The security concern cited in the Letter involves the individual's excessive use of alcohol. The Notification Letter stated that the

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1/ An access authorization (or security clearance) is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5.

individual is a user of alcohol habitually to excess, and has been diagnosed by a DOE consultant psychologist (hereinafter consultant psychologist) as suffering from "alcohol-related disorder not otherwise specified." The Notification Letter also indicated that the individual has not shown adequate evidence of rehabilitation or reformation. In this regard, the letter states that the individual indicated that she intends to continue using alcohol at the same level as she has in the past. According to the Notification Letter, this constitutes derogatory information under 10 C.F.R. § 710.8(j)(hereinafter Criterion J).<sup>2</sup> The letter indicates that the consultant psychologist found that the individual's alcohol-related disorder could cause a significant defect in her judgment and reliability. The letter stated that this gives rise to a security concern under 10 C.F.R. § 710.8(h)(Criterion H).

The Letter also indicates that the individual has engaged in unusual conduct or is subject to circumstances that tend to show she is not honest, reliable or trustworthy, or that furnish reason to believe she may be subject to pressure coercion, exploitation or duress, which may cause her to act contrary to the best interests of the national security. 10 C.F.R. § 710.8(l)(Criterion L). In this regard, the Letter notes that the individual was arrested for driving under the influence of alcohol (DUI) and public drunkenness. The letter also cited instances in which her daughters had to be removed from her care because the individual was intoxicated.

#### B. Consultant Psychologist's Report

The DOE consultant psychologist evaluated the individual on February 13, 2004. In his report based on the evaluation, the DOE consultant psychologist diagnosed the individual as suffering from alcohol-related disorder not otherwise specified, and as a user of alcohol habitually to excess. The consultant psychologist further indicated that the individual had not shown adequate evidence of rehabilitation or reformation, that she continues to drink alcohol at moderate levels on a regular basis, and therefore remains at risk for relapse.

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2/ Criterion J security concerns relate to an individual's use of alcohol habitually to excess, or to an individual's having been diagnosed by a psychiatrist or licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse.

In the report, the DOE consultant psychologist indicated that the individual had shown no evidence of rehabilitation or relapse-prevention practices. The consultant psychologist indicated that in order to demonstrate rehabilitation from the excessive alcohol use, the individual should abstain from alcohol for a minimum of 2 years, with professional counseling and/or AA participation for at least one year of this time. He further stated that AA participation should include the use of a sponsor, involve at least weekly meetings and be documented. As part of the rehabilitation program, he recommended a random drug screening/monitoring program for the individual. In his view, without professional counseling and AA participation, the individual could demonstrate reformation by total alcohol abstinence of at least 30 months, during which time the individual would participate in random drug screening at least four times per year.

## II. The Hearing

The Notification Letter informed the individual that she was entitled to a hearing before a Hearing Officer, in order to respond to the information contained in that letter. The individual requested a hearing, and that request was forwarded by the DOE Office to the Office of Hearings and Appeals (OHA). I was appointed the Hearing Officer in this matter. In accordance with 10 C.F.R. § 710.25(e) and (g), the hearing was convened.

At the hearing, the individual testified on her own behalf, and presented the testimony of her alcohol counselor (counselor), her mother, a friend and a co-worker. The DOE Counsel presented the testimony of the DOE consultant psychologist.

At the outset, the individual agreed with the diagnosis of the DOE consultant psychologist that she used alcohol habitually to excess and suffered from alcohol-related disorder not otherwise specified. See Transcript (hereinafter Tr.) at 5. Accordingly, the focus of the hearing was on the steps that the individual has taken towards reformation and rehabilitation. The witnesses' testimony was directed towards those matters.

### A. The Individual

The individual readily admitted that she has a problem with excessive use of alcohol. Tr. at 8. She testified that she has been attempting complete abstinence from alcohol since August 2004, but has had four relapses. She indicated that she has now

maintained abstinence since February 2005, or for about four months as of the date of the hearing. Tr. at 16-17.

She described the steps she has taken towards rehabilitation. In April 2005, she began an outpatient program at a treatment center where she attended group counseling sessions and received group therapy. The program included 17 three-hour sessions of intensive outpatient treatment. Tr. at 18, 32. See also, Outpatient Discharge Summary (Individual's Exhibit A). The individual also indicated that since September 2004, she has been seeing an alcohol counselor for one-on-one sessions. As of the time of the hearing, the counseling sessions had taken place on an irregular basis. However, the individual stated that she intends to continue with these sessions for at least the next year, and to meet with the counselor at least once a week or once every two weeks. Tr. at 20-22. She has also received some alcohol education from another counselor. Tr. at 21. See also, Individual's Exhibit B. She attended Alcoholics Anonymous (AA) meetings beginning in 2004, but has not yet located an appropriate sponsor or settled upon a regular AA group. Tr. at 28-29.

The individual discussed the "post treatment" recommendations that were included in the outpatient program's discharge summary. Specifically, she was advised to (i) attend AA meetings; (ii) "obtain and utilize a recovering female sponsor;" (iii) attend on a weekly basis the outpatient program's "continuing care group;" (iv) continue to follow the recommendations of her personal counselor; (v) explore volunteer work; and (vi) follow recommendations of her attorney regarding her legal issues.<sup>3</sup> Individual's Exhibit A at 2. The individual recognizes that she has not yet fully implemented into her life the key items, (i) through (iv), although she maintains that she is working towards this goal. Tr. at 33-35, 118-19.

With respect to her daily life, the individual testified that she maintains her abstinence by avoiding situations where alcohol might be a temptation, uses exercise as a substitute for alcohol, and calls her mother to take her mind off of alcohol. Tr. at 40. She stated that an important goal of her recovery from alcohol is to regain joint custody of her daughters. Tr. at 36.

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3/ These issues involve custody of her children and her relationship with her former husband.

#### B. The Individual's Mother

The individual's mother testified that she did not know until about three or four years ago that her daughter had a problem with excessive use of alcohol. However, she stated that she has recently seen a change in the individual, that she is more like her "usual self." Tr. at 46. She testified that the individual speaks enthusiastically about her efforts at rehabilitation and recovery. Tr. at 48. She stated that she would be able to tell if the individual had used alcohol because her personality would change, and she would become more "impatient." Tr. at 50.

#### C. Co-Worker and Social Friend

The co-worker testified that he has known the individual for four years and sees her on a daily basis at work. He stated that she has never used alcohol on the job. He stated that recently he has seen changes in her behavior, that she is "relaxed," and "more calm." Tr. at 54-55. He has never seen the individual socially, with one exception. The weekend before the hearing, the individual attended the wedding of the co-worker's son. The co-worker testified that although there was alcohol available at the reception, the individual did not have any. Tr. at 56-57.

The social friend testified that he has known the individual for eight to ten years, and sees her about twice a month. Tr. at 60, 64. He has seen her use alcohol, but not in the last year. Tr. at 61. He believes that the individual is deeply committed to straightening out her "problem" drinking. Tr. at 63.

#### D. The Individual's Alcohol Counselor

The counselor is a licensed marital and family therapist and a licensed professional counselor with a mental health services designation. Tr. at 68. He testified that he first saw the individual in September 2004 and that she told him she knew she had an alcohol problem. Tr. at 76. He recommended that the individual attend AA meetings, meet with an alcohol education expert, and attend an intensive outpatient program.

The counselor testified that he saw the individual her for about eight therapy sessions during the period December 2004 through June 2005. He indicated she has not been regularly attending AA meetings and has not yet found a suitable sponsor. He also indicated that she has not fully adopted the recommendations in the outpatient discharge summary discussed above. Tr. at 79-82.

He testified that she has made significant progress and is optimistic that she will not relapse, but he did not think she has completed all the necessary steps to be considered rehabilitated. He stated that she should follow through on completing the recommendations in the outpatient discharge summary, and believes she should establish a year of abstinence from alcohol. Tr. at 89, 117.

#### E. The DOE Consultant Psychologist

The consultant psychologist reiterated the findings set forth in his evaluation letter. He believed that the individual is a habitual user of alcohol to excess and suffers from alcohol related disorder not otherwise specified. Tr. at 107. He revised his prior recommendation that the individual demonstrate two years of abstinence. He testified that the individual could demonstrate rehabilitation through establishing a year of abstinence from alcohol, along with AA participation and counseling for that period. Tr. at 110.

### III. Applicable Standards

A DOE administrative review proceeding under 10 C.F.R. Part 710 is not a criminal case, in which the burden is on the government to prove the defendant guilty beyond a reasonable doubt. In this type of case, we apply a different standard, which is designed to protect national security interests. A hearing is "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization." 10 C.F.R. § 710.21(b)(6). The burden is on the individual to come forward at the hearing with evidence to convince the DOE that granting or restoring his access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.27(d).

This standard implies that there is a strong presumption against the granting or restoring of a security clearance. See Dep't of Navy v. Egan, 484 U.S. 518, 531 (1988) ("the clearly consistent with the interests of the national security test" for the granting of security clearances indicates "that security-clearance determinations should err, if they must, on the side of denials"); Dorfmont v. Brown, 913 F.2d 1399, 1403 (9th Cir. 1990)(strong presumption against the issuance of a security clearance). Consequently, it is necessary and appropriate to place the burden of persuasion on the individual in cases involving national

security issues. Personnel Security Hearing (Case No. VSO-0002), 24 DOE ¶ 82,752 at 85,511 (1995).

Once a security concern has been found to exist, the individual has the burden of going forward with evidence to rebut, refute, explain, extenuate or mitigate the allegations. Personnel Security Hearing (VSO-0005), 24 DOE ¶ 82,753 (1995), aff'd, 25 DOE ¶ 83,013 (1995). See also 10 C.F.R. § 710.7(c).

#### IV. Analysis

As noted above, the individual does not dispute the DOE consultant psychologist's February 2004 diagnosis that she used alcohol habitually to excess and suffered from alcohol disorder not otherwise specified. The issue in this case is therefore whether the individual has demonstrated that she is reformed and/or rehabilitated from this condition. As discussed below, I find that the individual is not reformed/rehabilitated at this time.

As is evident from my description of the witnesses' testimony, the individual has made significant progress towards recovering from her alcohol disorder. She has, first of all, acknowledged the extent of her problem. As the experts agree, this is a significant step along the road to recovery. Since August 2004, she has also been working towards abstinence. Although she candidly admits four relapses since that time, I am convinced that she has been abstinent since February 2005, a four month period as of the time of the hearing. Further, she has begun some involvement with AA, received counseling and education, and participated in therapy. This is all very much in her favor.

However, the experts agree that it is still too early to conclude that the individual is reformed/rehabilitated from her alcohol problem. The consultant psychologist and the counselor both testified that one year of abstinence along with a year of additional therapy, involvement with AA and having an AA sponsor are necessary before the individual can be considered rehabilitated. As her counselor stated, the individual needs to fully implement the recommendations set forth in the discharge statement of her outpatient program. Even the individual herself recognizes that she has more work to do to establish complete recovery and rehabilitation. She has therefore not resolved the security concerns related to her excessive use of alcohol.

For these same reasons, I find that the individual has not resolved the Criteria H and L security concerns cited in the Notification Letter.

V. CONCLUSION

As the foregoing indicates, the individual has not resolved the Criteria H, J, and L security concerns cited in the Notification Letter. It is therefore my decision that granting this individual access authorization is not appropriate at this time.

The parties may seek review of this Decision by an Appeal Panel under the regulation set forth at 10 C.F.R. § 710.28.

Virginia A. Lipton  
Hearing Officer  
Office of Hearings and Appeals

Date: August 1, 2005